

## REMARKS

Claims 1-4, 6, and 8-22, and 25 are pending in the application. Claims 1, 6, and 15 have been amended. Claims 23-24, and 26 have been canceled. No new matter is being introduced by way of the amendments. Claim 1, line 6 has been amended to change the phrase “the user” to “the user computing device” in order to place line 6 in conformance with line 3 with respect to antecedent basis. Reconsideration of the present application is respectfully requested.

### Claim Objections

Claim 6 stands objected to because the term “inband” is used whereas in previous claims the term “in-band” is used. In accordance with the Examiner’s request, Claim 6 has been amended to change the term “inband” to “in-band.”

### Rejections under 35 U.S.C. § 112

Claims 6, 8-10, and 15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In regards to Claim 6, the Office Action asserts that “it is unclear what is authenticating the user or establishing the pathway.” Claim 6 has been amended to include “authenticating, by the first server, a request to access the remote modem” and “establishing, by the first server, a secure pathway over the out-of-band access path between the user computing device and network element.” Support for the amendments made to Claim 6 may be found in at least paragraph [0057] on pg. 19 and paragraph [0051] on pg. 17 of the specification as originally filed.

The Office Action asserts that “there is no step of requesting a dial up number on Claim 11 and therefore lacks antecedent basis” in regard to Claim 15 which includes the feature of “wherein requesting a dial up number includes...”. Claim 15 has been amended to change the phrase “wherein requesting a dial-up number includes...” to “wherein identifying a dial-up number includes...” to conform Claim 15 with Claim 11 with respect to antecedent basis. In view of the foregoing, Applicants respectfully request that the 35 U.S.C. § 112, second paragraph rejections of Claims 6, 8-10, and 15 be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 1-4, 6, 10-14, 16-22, and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Publication No. 2002/0118671 A1 to Staples et al. (hereinafter “Staples”) in view of U.S. Publication No. 2003/0018916 A1 to Smith et al. (hereinafter “Smith”). Regarding Independent Claim 1, the Office Action asserts that Figs. 4 & 6 and paragraph [0157] of Staples discloses “an in-band access path defined by a communication path between the user, and remote network element via said network, firewall and router.” Figs. 4 and 6 of Staples appear to disclose a server system 120 which allows a remote user to answer a telephone call received at the server system 120, as well as access a virtual private network, using a user communication device 130 which is in communication with the server system 120 via the Internet 125. (See paragraphs [0123]-[0125] & [0130]-[0131] of Staples). The Office Action further asserts that Fig. 3B of Staples discloses “an out of band access path defined by a communication path between the user, and remote network element via said first network, firewall, first server, and PSTN.” Fig. 3B of Staples appears to describe allowing a remote user using user communication device 130 to access telephony functions supported by a telephony server 110 residing at a local telephone company through the server system 120, in which the user communication device 130 is in communication with the server system 120 via the Internet 125. (See paragraphs [0108]-[0110] of Staples).

Thus, the cited portions of Staples appear to describe allowing a remote user to use a user communication device 130 to access telephony functions of a telephony server 130 via an Internet connection. Applicants respectfully submit that Staples fails to teach or suggest both an in-band path and an out-band path between a user computing device and remote network element, much less “an in-band access path defined by a communication path between the user computing device and the remote network element via said first network, firewall, and router” and “an out-of-band access path defined by a communication path between the user computing device and the remote network element via said first network, firewall, first server, modem bank, and PSTN” as claimed in Independent Claim 1. Applicants respectfully submit that Smith also fails to teach or suggest these features. For at least the foregoing reasons, Applicants respectfully submit that Independent Claim 1 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Independent Claim 1 be withdrawn.

Independent Claim 6 includes the features of “communicating between a user computing device and a network element via an in-band access path, the in-band access path including a firewall and router” and “communicating between the user computing device and the network element via an out-of-band access path, the out-of-band access path including the firewall, a first server, a modem bank, and a public switched telephone network.” For analogous reasons as those discussed with respect to Independent Claim 1, Applicants respectfully submit that Independent Claim 6 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Independent Claim 6 be withdrawn.

Independent Claim 11 includes “One or more computer-readable storage media having computer-useable instructions embodied thereon, the instructions, when executed on a computing device, cause the computing device to: receive a first request via an out-of-band process to establish a communications pathway with a network device.” For analogous reasons as those discussed with respect to Independent Claim 1, Applicants respectfully submit that the cited references fail to disclose an “out-of-band process to establish a communication pathway with a network device.” Applicants respectfully submit that Independent Claim 11 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Independent Claim 11 be withdrawn.

Claims 2-4, 10, 12-14, 16-22, and 25 are dependent upon and include the features of their respective Independent Claims 1, 6, and 11. For at least the reasons discussed with respect to Independent Claims 1, 6, and 11, Applicants respectfully submit that Claims 2-4, 10, 12-14, 16-22, and 25 are allowable over the cited references and request that the 35 U.S.C. 103(a) rejections of Claims 2-4, 10, 12-14, 16-22, and 25 be withdrawn.

Claims 8, 9, and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Staples in view of Smith, and further in view of U.S. Patent No. 6,151,628 to Xu et al. (hereinafter “Xu”). Claims 8, 9, and 15 are dependent upon their respective Independent Claims 6 and 11. As discussed above, neither Staples nor Smith teach or suggest the features of Independent Claims 6 and 11 of an “out-of-band access path” or an “out-of-band process” respectively. Applicants respectfully submit that Xu also fails to teach or suggest these features. For at least the foregoing reasons, Applicants respectfully submit that Claims 8, 9, and 15 are allowable over the cited references and request that the 35 U.S.C. 103(a) rejections of Claims 8, 9, and 15 be withdrawn.

### CONCLUSION

For the foregoing reasons, and for other apparent reasons, Applicants respectfully request reconsideration and favorable action. If the Examiner feels a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stand ready to conduct such a conference at the convenience of the Examiner.

Applicants believe no fee is due. However, if a fee is due, please charge our Deposit Account No. 19-3140, under Order No. 11000060-0043 from which the undersigned is authorized to draw.

Dated: March 16, 2009

Respectfully submitted,

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